

Message Text

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AMEMBASSY CARACAS

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CARACAS FOR DEA

E.O. 11652: N/A

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SUBJECT: NEW PROPOSED LEGISLATION ON NARCOTICS FOR BRAZIL

SUMMARY. THE EMBASSY HAS OBTAINED IN CONFIDENCE AN ADVANCE COPY OF THE TEXT OF A NEW PROPOSED LAW ON NARCOTICS FOR BRAZIL. THE PROPOSED LAW WAS RECENTLY RECOMMENDED TO THE PRESIDENT OF THE REPUBLIC BY THE WORKING GROUP CREATED IN THE MINISTRY OF JUSTICE IN 1975 (SEE 75 BRASILIA A-146) TO DEVELOP NEW MEASURES IN THE AREA OF DRUG PREVENTION, TREATMENT AND LAW ENFORCEMENT. THE NEW PROPOSED LEGISLATION HAS REPORTAEDLY BEEN APPROVED BY THE PRESIDENCY IN ITS LAW ENFORCEMENT ASPECTS, BUT HAS BEEN REFERRED TO THE MINISTRIES OF HEALTH AND EDUCATION FOR SUGGESTIONS. THE NEW LAW WILL, AMONG OTHER THINGS, INCREASE PENALTY FOR TRAFFICKING, REDUCE PENALTY FOR SIMPLE POSSESSION, PROVIDE FOR EXPULSION OF FOREIGNNERS WHO COMMIT A DRUG OFFENSE, PROVIDE FOR THE CREATION OF SPECIALIZED COURTS FOR DRUG CRIMES, AND TAKES AN INITIAL STEP TOWARD THE CREATION OF A PROFESSIONAL CLASS IN NARCOTICS MATTERS IN THE FEDERAL POLICE. IT IS EXPECTED THAT THE PROPOSED LEGISLATION WILL BE SHORTLY SUBMITTED TO THE BRAZILIAN CONGRESS IN A PRESIDENTIAL MESSAGE. THE HIGHLIGHTS OF THE DRAFT LAW FOLLOW. END SUMMARY.

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1. THE RESPONSIBILITY FOR PLANNING ANTI-NARCOTICS PROGRAMS AND POLICIES WILL REST IN THE NATIONAL COUNCIL FOR PREVENTION AND INSPECTION OF DRUGS TO BE CREATED IN THE MINISTRY OF HEALTH. THIS MINISTRY WILL ALSO BE RESPONSIBLE FOR CONTROLLING ALL PLANS, EDUCATIONAL PROGRAMS OR PUBLIC CAMPAIGNS ON ALL QUESTIONS INVOLVING DRUGS, AS WELL AS FOR ISSUING REGULATIONS ON PROHIBITION, INSPECTION, PRODUCTION, CONTROL, AND COMMERCIALIZATION OF DRUGS IN GENERAL.

2. ALL FEDERAL AND STATE HOSPITALS WILL HAVE, WHENEVER FEASIBLE AND NECESSARY, SPECIALIZED UNITS FOR TREATMENT OF ADDICTS. TREATMENT WILL BE AVAILABLE FOR ADDICTS WHICH ARE CONVICED OR ACQUITTED, AS WELL AS FOR THOSE WHO ARE NOT CHARGED WITH ANY DRUG OFFENSE. COMMITMENT FOR TREATMENT WILL BE MADE BY JUDICIAL, POLICE OR ADMINISTRATIVE AUTHORITIES.

3. PENALTIES FOR TRAFFICKING IN DRUGS WILL BE CONSIDERABLY INCREASED. THEY WILL GO UP FROM THE CURRENT PENALTY OF FROM ONE TO SIX YEARS IN PRISON TO FROM FIVE TO FIFTEEN YEARS, PLUS FINE. THE NEW PENALTY WILL ELIMINATE THE POSSIBILITY OF SUSPENSION OF THE SENTENCE (SURSUS) FOR TRAFFICKERS AND WILL CONTINUE TO MAKE THEM INELIGIBLE FOR BAIL. THE PENALTY FOR CONSPIRACY IN DRUGS WILL ALSO BE INCREASED TO FROM THREE TO TEN YEARS IN PRISON, PLUS FINE.

4. ANOTHER SIGNIFICANT CHANGE IN THE NEW LAW IS THAT IT CONSIDERABLY REDUCES THE PENALTY FOR SIMPLE POSSESSION. SIMPLE POSSESSION OF DRUGS, FOR THE INDIVIDUALS USE, WILL NOW BE PUNISHABLE WITH FROM SIX MONTHS TO TWO YEARS IN PRISON, PLUS FINE. UNDER THE CURRENT LEGISLATION, PENALTY FOR SIMPLE POSSESSION IS THE SAME AS THAT FOR TRAFFICKING. THE NEW PENALTY WILL NOW ALLOW FOR SUSPENSION OF PENALTY AS WELL AS FOR RELEASE ON BAIL. NO DISTINCTION, HOWEVER, WILL BE MADE BETWEEN MARIJUANA AND THE HARDER DRUGS. PENALTIES WILL BE THE SAME FOR ALL TYPES OF CONTROLLED SUBSTANCES.

5. PENALTIES WILL BE INCREASED BY FROM ONE THIRD TO TWO THIRDS IN CASES OF INTERNATIONAL TRAFFIC, IN CASES OF EXTRATERRITORIALITY OF BRAZILIAN LAWS, AND WHEN THE VIOLATOR IS A LAW ENFORCEMENT OFFICER.
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6. THOSE WHO BECOME TOTALLY INCAPABLE OF UNDERSTANDING THE ILLICIT NATURE OF THEIR ACT FOR REASONS OF DRUG DEPENDENCE OR FORCE MAJEURE WILL BE EXEMPT FROM PUNISHMENT. THOSE WHOSE UNDERSTANDING IS DIMINISHED BECAUSE OF SAME REASONS MAY HAVE THEIR PENALTY REDUCED BY FROM ONE THIRD TO TWO THIRDS.

7. TIME LIMITS FOR COURT PROCEEDINGS AND SENTENCING WILL BE

EXPANDED. THE CURRENT LIMITS, ORIGINALLY DESIGNED TO SPEED UP ADJUDICATION, ARE GENERALLY CONSIDERED TO BE UNREALISTIC.

8. FEDERAL COURTS WILL NORMALLY TRY CASES INVOLVING INTERNATIONAL TRAFFICKING. STATE COURTS, HOWEVER, WILL BE COMPETENT TO HEAR SUCH CASES WHEN NO FEDERAL COURT IS AVAILABLE IN THE MUNICIPALITY WHERE THE CRIME WAS COMMITTED.

9. FOREIGNERS WHO COMMIT A DRUG OFFENSE AND ARE CONVICTED WILL BE SUBJECT TO EXPULSION, BUT ONLY AFTER SERVING THE SENTENCE. EXCEPTION WILL BE MADE IN CASES IN WHICH NATIONAL INTERESTS RECOMMEND THEIR PROMPT EXPULSION.

10. SPECIALIZED COURTS FOR DRUG OFFENSES WILL BE CREATED, WHENEVER NECESSARY AND FEASIBLE.

11. ONLY POLICEMEN WHO HAVE ADEQUATE SPECIALIZATION IN NARCOTICS WILL BE ABLE TO WORK IN THE NARCOTICS REPRESSION SECTOR OF THE FEDERAL POLICE. THIS, ACCORDING TO A MEMBER OF THE WORKING GROUP, IS THE FIRST STEP TOWARD THE CREATION OF A PROFESSIONAL CLASS OF NARCOTICS LAW ENFORCEMENT OFFICERS IN BRAZIL. FURTHER DETAILS WILL BE PROVIDED AFTER THE DRAFT WILL BECOMES LAW.
CRIMMINS

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